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12-21-07

No. 07-678

In the Supreme Court of the United States

MICHAEL K.C. TOM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends that the court of appeals erroneously applied a proportionality principle in reviewing his below-Guidelines sentence for reasonableness. In *Gall* v. *United States*, No. 06-7949 (Dec. 10, 2007), slip op. 8, this Court held that "appellate courts may * * * take the degree of variance into account and consider the extent of deviation from the Guidelines," but it rejected "an appellate rule that requires 'extraordinary' circumstances to justify a sentence outside the Guidelines range" and "the use of a rigid mathematical formula that uses the percentage of a departure as the standard for determining the strength of the justifications required for a specific sentence." Accordingly, the appropriate disposition is to grant certiorari, va-

cate the judgment of the court of appeals, and remand the case for further consideration in light of *Gall*.*

PAUL D. CLEMENT
Solicitor General

DECEMBER 2007

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* The government waives any further response to the petition unless this Court requests otherwise.